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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/282,907	03/31/1999	CHING-YUN CHAO	AT9-98-441	9256

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EXAMINER
FLEURANTIN, JEAN B

ART UNIT	PAPER NUMBER
2172	9

DATE MAILED: 02/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

NM

Advisory Action	Application No.	Applicant(s)	
	09/282,907	CHAO ET AL.	
	Examiner	Art Unit	
	Jean B. Fleurantin	2172	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☒ The period for reply expires *3* months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☐ The proposed amendment(s) will not be entered because:

   (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ they raise the issue of new matter (see Note below);

   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a)☐ affidavit, b)☐ exhibit, or c)☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *See Continuation Sheet*.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the ~~proposed amendment(s) a)☐ will not be entered or b)☐ will be entered and an explanation of how the new or amended~~ claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: *NONE*.

   Claim(s) objected to: *NONE*.

   Claim(s) rejected: *1-25*.

   Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. ☐ Other: _____

Continuation of 5. does NOT place the application in condition for allowance because: As per claims 1, 9, 15, and 21 Applicant stated that the San Andres reference does not teach or suggest: 'either alone or combination, all of the limitations of the claimed invention.' Although the prior art does not teach all limitations of the claimed invention, it teaches the system in the art. Thus, the arguments are not persuasive.

In response to applicant's argument on pages 2-4 that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, San Andres provides user access to service content data that is updated by the on line service on a transaction by transaction basis, and permits users to read and download messages for review by other users, see col 1, lines 38-43.

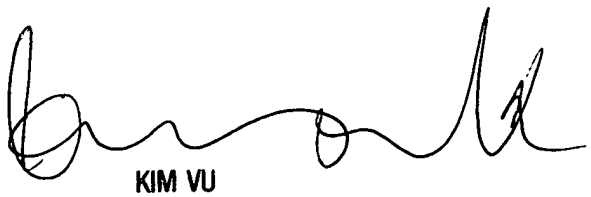
Applicant stated on page 6 that "each node in the computer cluster voting based on a functional outcome of the database update request". However, Examiner disagrees because San Andres strongly suggests the step of the arbiter monitors the outcome of the transaction on each server by checking the status codes returned by the servers, when one server of the service group processes the dispatched transaction differently than the other servers the arbiter uses a voting scheme to decide which server or servers are to be taken off line service group, the arbiter uses a majority rules voting scheme under the majority rules scheme, if the majority number servers of the service group report a different outcome than others servers the majority servers are treated as being inconsistent with final outcome and taken off line; which is read as each node in the computer cluster voting based on a functional outcome of the database update request (see col. 19, lines 44-55). Thus, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teaching of San Andres with the step of each node in the computer cluster voting based on a functional outcome of the database update request. This modification would allow the teachings of San Andres to improve the accuracy and reliability of the error detection protocol.

In response to applicant's argument on page 6 that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See In re McLaughlin, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Applicant stated on pages 9, 11, and 15 that "voting, by all of the other nodes in the computer cluster, to approve update if a match results from the comparison". However, Examiner disagrees because San Andres includes the step of the whenever the arbiter replicates a transaction the arbiter monitors the outcome of the transaction on each server of the service group to ensure consistent processing of the transaction by all such servers, when one or more servers indicates a different outcome than the other servers of the service group the arbiter uses a voting scheme to resolve the conflict between the servers a preferred voting scheme is described below under the heading status codes and conflict resolution; which is read as voting, by all of the other nodes in the computer cluster, to approve update if a match results from the comparison (see col. 17, lines 10-19).

Examiner is entitled to give claim limitations their broadest reasonable interpretation in light of the specification.

During patent examination, the pending claims must be 'given the broadest reasonable interpretation consistent with the specification.' In re Prater, 162 USPQ 541,550-51 (CCPA 1969).



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